

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

(Pro Se Plaintiff)

GERARD O'NEILL,

08 CV 1689 (KMW)(RLE)

Plaintiff,

- against -

TITO HERNANDEZ,  
RICARDO MORALES, and  
NEW YORK CITY HOUSING AUTHORITY,

**NOTICE OF MOTION  
TO DISMISS THE FIRST  
AMENDED COMPLAINT**

Defendants.

**PLEASE TAKE NOTICE** that, upon the First Amended Complaint, the declaration of Jeffrey Niederhoffer in Support of Defendants' Motion to Dismiss the First Amended Complaint (and Exhibits A-J attached thereto), dated July 21, 2008, and Defendants' Memorandum of Law in Support of Motion to Dismiss the First Amended Complaint, dated July 21, 2008, defendants Tino Hernandez (incorrectly identified in the complaint as "Tito" Hernandez), Ricardo Morales, and New York City Housing Authority will move this Court before the Honorable Kimba M. Wood, Chief United States District Judge, at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York, on a date to be set by the Court, for an order pursuant to Rules 9(b) and 12(b) of the Federal Rules of Civil Procedure dismissing the First Amended Complaint filed in this action with prejudice on the ground that it fails to state a claim upon which relief may be granted, and granting such other relief as to this Court seems proper.

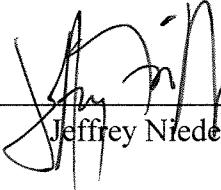
**PLEASE TAKE FURTHER NOTICE** that, in accordance with Local Rule 12.1, included with the aforementioned papers, is a document entitled "Notice to Pro Se Litigant Who Opposes a Rule 12

Motion Supported by Matters Outside the Pleadings," dated July 21, 2008.

**PLEASE TAKE FURTHER NOTICE** that, in accordance with Southern District of New York Local Rule 6.1, referencing Rule 6(a) and (e) of the Federal Rules of Civil Procedure, a copy of any papers in opposition to this motion shall be served on defendants at the address stated below no later than ten (10) business days after service on plaintiff of defendants' motion papers, and a copy of any papers in reply in further support of the motion shall be served on plaintiff within five (5) business days after service on defendants of plaintiff's opposition papers.

Dated: New York, New York  
July 21, 2008

RICARDO ELIAS MORALES  
General Counsel  
New York City Housing Authority  
Attorney for Defendants  
250 Broadway, 9<sup>th</sup> Floor  
New York, New York 10007  
(212) 776-5259

By: 

Jeffrey Niederhoffer (JN 1942)

TO: GERARD O'NEILL  
Plaintiff Pro Se  
870 Columbus Avenue, Apt. # 3C  
New York, New York 10025

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Donna M. Murphy,  
Jeffrey Niederhoffer,  
Of Counsel